

FILED

MAY - 8 2012

WILLIAM B. GUTHRIE
Clerk, U.S. District Court
By Deputy Clerk**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF OKLAHOMA**

MARK KENDALL MCFADDEN,

Plaintiff,

vs.

ARCH INSURANCE COMPANY,
A Missouri Corporation,

Defendant.

Case No.: **CIV 12 - 208 - JHP****COMPLAINT**

COMES NOW, Mark Kendall McFadden, and for his cause of action against Arch Insurance Company would inform the Court as follows:

1. The Plaintiff is a resident of Muskogee County, Oklahoma.
2. The Defendant, Arch Insurance Company is a Missouri Corporation with its principal place of business in New Jersey. Arch Insurance Company is a licensed insurance company authorized to and doing business in the State of Oklahoma that sold a fleet insurance policy to Muskogee County EMS.
3. This action is a diversity action with Plaintiff, a resident of Muskogee County, Oklahoma and the Defendant company doing business in Muskogee County, Oklahoma, but an entity that is a foreign corporation.
4. On or about January 15, 2010, the Plaintiff was a passenger, acting as an EMT, in an ambulance that struck by Kimberly Rubi Hackmann.
5. The accident that occurred on or about January 15, 2010 in the City of Tulsa, Tulsa County Oklahoma, occurred as a result of the negligence of Kimberly Rubi Hackmann.

6. The negligence of Kimberly Rubi Hackmann included, but was not limited to, failing to yield to an emergency vehicle and being distracted, failing to keep a proper watch and failing to focus on her driving.

7. Kimberly Ruby Hackmann, told the investigating officer that she was southbound on the inside lane of south Mingo Road, that she looked away momentarily to tend to a small child in the back seat, heard the siren, looked back to the front, noticed the ambulance with its lights and siren activated, but then was unable to stop in time to avoid a collision. Kimberly Rubi Hackmann told the officer that she was sorry and that she knew it was her fault.

8. The speed of impact was significant, causing the ambulance to be sent to be rebuilt and causing severe damage to the vehicle driven by Kimberly Rubi Hackmann.

9. Mr. McFadden was insured by State Farm Mutual Automobile Insurance Company, having his own UM Policy. State Farm Mutual Automobile Insurance Company also insured Kimberly Rubi Hackmann and State Farm has paid the policy limits on both the tortfeasor policy and Plaintiff's UM Policy.

10. Arch Insurance Co. provided insurance to Plaintiff's employer, Muskogee County EMS, including UM coverage for the fleet.

11. Plaintiff has requested Defendant provide UM Benefits for the accident, but the carrier has failed to do so.

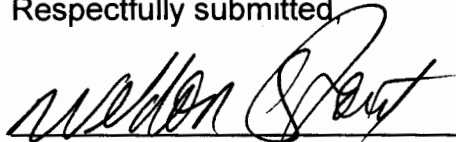
10. Defendant has failed to provide benefits to a beneficiary of the policy, has failed to disclose the benefits available to Plaintiff and has neglected to properly investigate and evaluate the claim.

11. The actions and failure to act of the Defendant are a breach of contract and are such as to constitute and be a bad faith breach of contract. These actions demonstrate a bad faith refusal to properly investigate, evaluate and pay the claim evidencing a reckless disregard of Mark McFadden's rights as a beneficiary of the policy.

WHEREFORE, based upon the above and foregoing, Plaintiff requests judgment against the Defendant for the contract benefits of the UM Policy in excess of \$150,000.00, for damages for bad faith in an amount to be determined by a jury, attorney fees and costs and for such other and further relief as the Court may deem reasonable and property.

Date: May 8, 2012.

Respectfully submitted,



Weldon Stout, OBA#8673
WRIGHT, STOUT & WILBURN, PLLC
300 West Broadway, P.O. Box 707
Muskogee, OK 74402
Tele: 918.682.1121; Fax: 918.683.6340
email: Weldon@wsfw-ok.com

**ATTORNEY LIEN CLAIMED
JURY TRIAL DEMANDED**